IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9181 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DINESHBHAI BABUBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PAHWA for Petitioner

MR AJ DESAI ASSTT GOVT PLEADER for Respondent No.1 and 2 & 3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 02/03/2000

ORAL JUDGEMENT

#. Heard learned advocate Mr.Navin Pahwa for learned Advocate Ms.Suman Pahwa on behalf of the petitioner and

learned AGP Mr.A.J.Desai for respondents No : 1,2 & 3 and Ms.P.J.Davawala for respondent No : 4.

#. The detention order dated 22-9-1999 passed by the respondent No :3 - The Joint Secretary, Civil Supplies and Consumer Affairs Department, Sachivalaya, Gandhinagar in exercise of powers conferred under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (`PBM Act' for short) is challenged under the present proceedings under Article 226 of the Constitution of India.

#. The petitioner has been running a business in the name and style of "Goverdhan Foods and Proteins" at the premises bearing Shop No : 4, Shanker Estate, Naroda GIDC, Ahmedabad in respect to food grains and edible oils etc. That the petitioner obtained licence under the provisions of Essential Commodities (Licence Control and Declaration of Stock) Orders 1981 and the said licence is valid upto 31-12-2003.

#. That on 14-6-1999, the officers of the Civil Supply Department of Respondent No : 1 - State interrogated the driver of tanker bearing registration No : GJ-12-U-8544 on the Gondal - Rajkot High Way near Mukhi Petrol Pump and on inquiry found that the said tanker contained 9870 kgs pamoline oil and was being transported from Kandla pursuant to bill No : 3154 dated 13-6-1999 issued in favour of Goverdhan Food Proteins (the business concern of the petitioner). That the driver of the tanker had no document to unload the said goods at Gondal and as such, the officers of Civil Supplies Department seized the said pamoline oil on 14-6-1999 as unauthorised transportation of essential commodities. That thereafter on further inquiry, it was found that the stock register maintained by the petitioner in respect to his business concern Goverdhan Food Proteins contained several irregularities in respect to not showing the stock of purchase and sale in between 12-4-1999 to 21-4-1999. That the statement dated 16-6-1999 of the petitioner contained an admission that he has purchased and sold edible oil without showing the same on stock register. He has not maintained the bills for the same also. That on further inquiry, it was also found during cross checking that one Mewad Agro Industry, Aslali and Shayona Food Proteins, Navsari have shown on their stock registers the edible oil sold by the business concern of the petitioner. That on the basis of the said material, the report was made to the State Government that the petitioner has been dealing in edible oils and has failed to maintain the requisite stock register to show the correct transaction of purchase and

sale. That such irregularities of the books of accounts being in violation of Condition No : 23 of relevant orders of 1981 and was an offence punishable under Section 7 of the Essential Commodities Act. That in consideration of the material produced before the Deputy Secretary, Civil Supplies Department and Consumer Affairs Department - The Respondent No : 1 - State as the detaining authority came to the conclusion that the transactions dealt into and likely to be dealt by the petitioner are likely to affect prejudicially to the maintenance of supplies of commodities essential to the community. That enforcement of criminal proceeding under the Essential Commodities Act as well as cancellation of licence are not likely to prevent the petitioner from continuing his prejudicial activities and as such, the detention order under Section 3(1)(2) of PBM Act being necessary, the impugned order is passed.

#. The detention order dated 22-9-1999 could not be executed but the petitioner surrendered on 13-10-1999. That thereafter the petitioner has challenged the said order on numerous grounds.

#. It has been contended on behalf of the petitioner that as per the contention raised vide para "M" of the petition, the impugned order suffers infirmity of unexplained inordinate delay in taking action. The learned advocate for the petitioner has elaborated that the tanker transporting said pamoline oil from Kandla to Gondal was seized on 14-6-1999 and thereafter, despite conclusion of the inquiry, the impugned action of passing of the detention order has been passed on 22-9-1999. Thus, there is delay of more than 3 months in taking the action on the facts which were received by the competent authority. It is also submitted that the affidavit in reply filed by the Joint Secretary to the Government, Food and Civil Supplies and Consumer Affairs Department dated 18th December, 1999, contain reply to the contention of the petitioner vide para 18, whereby, explanation given cannot be said to be a satisfactory, reasonable or sufficient and as such, the impugned order is bad in law.

#. That in the matter of PRADEEP NILKANTH PATURKER VS. STATE OF MAHARASHTRA reported vide AIR 1994 S.C. 656, the Supreme Court having considered the different authorities expressed the view that delay in taking action under detention law ipso facto is not bad, however, in the absence of reasonable and satisfactory

explanation, in the facts and circumstances of the case, the order cannot be sustained as it would be contrary to the object and spirit of law. The said proposition has been reiterated by this Court in the matter of ELESH PATEL VS. COMMISSIONER OF POLICE, AHMEDABAD reported vide 1997 (1) GLH 381 after considering the other different authorities of Supreme Court.

#. In the instant case, the competent authority was supplied with all necessary facts including the statements of the petitioner prior to 15-7-1999 as stated in affidavit in reply by respondent No : 2 vide para 18. However, there is no explanation much less satisfactory or a reasonable explanation as to what prevented the competent authority from taking action in between the period from 15-7-99 to the date of order i.e. 22-9-1999. The said delay in taking action being inordinate delay without any reasonable explanation is fatal to the validity of the order and as such, it is difficult to uphold the order in the context of the said contention.

#. As the petition could be disposed of on the above stated ground alone, it is not necessary to consider and decide the other contentions raised by the petitioner.

##. On the basis of the foregoing discussions, the detention order dated 22-9-1999 passed by the respondent No : 3 against the petitioner is hereby quashed and set aside. The petitioner DINESHBHAI BABUBHAI PATEL is ordered to be set at liberty forthwith if not required in any other proceedings. Rule to that extent is made absolute.

Date : 2-3-2000 [A.K.Trivedi, J.]

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